

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 14TH FEBRUARY 2007 / 25TH MAGHA 1928

CRP.No. 116 of 2000(C)

ORDER IN IA 2472/98 IN O.S.123/96 OF MUNSIF'S COURT,NEDUMANGAD

REVN. PETITIONER/PETITIONER/PLAINTIFF:

BALAKRISHNAN NAIR, S/O. GOPALA PILLAI, RESIDING AT KUNNATHU
VEEDU, ANACODE MURI, VEERANAKAVU VILLAGE, NEDUMANGAD
TALUK.

BY ADV. SRI.L.MOHANAN

RESPONDENTS/CR.PETITIONERS/DEFENDANTS:

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1. D. SAROJINI AMMA, RESIDING AT KRISHNA VILASOM BUNGLOW,
THOTTAMPARA MURI, VEERANAKAVU VILLAGE,
NEDUMANGAD TALUM.
 2. K.PANKAJAKSHAN NAIR, RESIDING AT DO.
 3. S.VIJAYAKUMARI, RESIDING AT DO.
 4. S.YAMUNA DEVI, RESIDING AT DO.
 5. S.LATHA KUMARI, RESIDING AT DO.
 6. S.RAJESWARI, RESIDING AT DO.
 7. K.RADHAKRISHNAN NAIR, RESIDING AT DO.
 8. S.GANGADEVI, RESIDING AT DO.

BY ADV. SRI.G.S.REGHUNATH FOR R2.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 31/01/2007, THE COURT ON 14/2/2007 PASSED THE
FOLLOWING:

ORDER ON CMP 221/00 IN CRP 116/00

DISMISSED.

SD/- ANTONY DOMINIC,JUDGE.

14/2/2007

Antony Dominic, J.
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C.R.P.No.116 of 2000
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Dated this the 14th day of February, 2007.

ORDER

This revision petition is filed by the plaintiff in O.S.No.123 of 1996 on the file of the Principal Munsiff's Court, Nedumangad. It is claimed in the suit that the plaint schedule property came to the possession of the predecessors of the plaintiff by virtue of a mortgage deed No.3928 of 1084 dated 15.8.1084 M.E. It is stated that the mortgagees retained absolute possession and enjoyment of the property and that on the death of the mortgagees, the property devolved on the successors and ultimately, the plaintiff also being a successor, is presently in the exclusive possession and enjoyment of the plaint schedule property. The suit has been filed praying that the title and possession of the property on the basis of the mortgage deed be decreed in favour of the plaintiff and to restrain the defendants from causing any interference in the enjoyment of the property. It is averred in the plaint that the mortgage became barred by limitation and there is also an averment that the plaintiff is entitled to fixity of tenure as per the provisions of the Kerala Land Reforms Act 1964

(hereinafter referred as "the Act") as amended by Act 35 of 1969.

2. It appears that the plaintiff had filed I.A.No.2472 of 1998 for a reference to the Land Tribunal for deciding the question of fixity of tenure. After hearing the parties, by order dated 12.11.1999, the court below dismissed the application on the ground that the question of fixity of tenure does not arise for consideration in the suit and therefore, there was no scope or necessity for a reference under Section 125(3) of the Act.

3. Counsel for the petitioner/plaintiff submitted that in the light of the claim of the plaintiff for fixity of tenure, the civil court had no jurisdiction to decide the question of tenancy in view of Section 125(3) of the Act and therefore the question raised in this regard ought to have been referred to the Land Tribunal concerned for adjudication. On the other hand, counsel for the respondents/defendants would forcefully contend that the plaintiff, who is bound to lose in the suit, had filed the I.A. only to delay the disposal of the suit and that the request lacks merits or bonafides. It is also contended that the issue of fixity of tenure does not arise for consideration in the case and hence, the impugned order is liable to be upheld.

4. Having heard counsel on either side, I am satisfied that the court below has correctly rejected the I.A. seeking reference to the

Land Tribunal under Section 125(3) of the Act. This is probably one of the rare situations in which a plaintiff is claiming the benefits under the Act and seeking a reference under Section 125(3) thereof. In this case, the plaintiff has traced his title to a mortgage deed of 1084 M.E. and is claiming to be entitled to a declaration of title and possession of the property as a successor of the original mortgagees. That being the principal contention, without giving any details of the basis on which he is claiming fixity of tenure or even stating as to how he has become a tenant under the Act, the plaintiff made a vague averment that he is also entitled to fixity of tenure. In a suit for declaration of title and possession of the plaint schedule property on the basis of a mortgage, one fails to understand how the question of fixity of tenure arises for consideration. In my view, the question does not arise for consideration, which is a pre-requisite for a reference under Section 125(3) of the Act.

The Civil Revision Petition lacks merit and it is accordingly dismissed. The parties will suffer their respective costs.

Antony Dominic
Judge.